

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:)
Fallbrook Naval Weapons Station) Voluntary Cleanup
) Agreement
Address: Fallbrook, California) Health and Safety
Responsible Party:) Code Section 25355(b)
The U.S. Department of the Navy)

I. INTRODUCTION

1.1 Parties. The California Environmental Protection Agency, Department of Toxic Substances Control (Department) hereby enters into this Voluntary Cleanup Agreement (Agreement) with the United States Department of the Navy.

1.2 Site. The Site which is the subject of this Agreement is located at Fallbrook Naval Weapons Station, Fallbrook, California. A diagram of the Site and a location map are attached as Exhibit A and Exhibit B.

1.3 Jurisdiction. This Agreement is entered into by the Department and Project Proponent pursuant to Health and Safety Code Section 25355(b).

1.4 Purpose. In entering into this Agreement, it is the objective of the parties to conduct a non-time critical removal action to remove the napalm from the site and to remediate any contamination caused by the napalm to the facility, surrounding and

1 underlying media. The Scope of Work for this non-time critical
2 removal action is found in Exhibit C. The purpose of this
3 Agreement is also to obtain reimbursement from the Project
4 Proponent for the Department's oversight costs.

6 II. BACKGROUND AND FINDINGS OF FACT

8 2.1 Ownership. The site which is the subject of this
9 Agreement is presently owned by the Department of the Navy.
10 Bob Schard is the primary contact. His address is Southwest
11 Division, Naval Facilities Engineering Command, 1220 Pacific
12 Highway, San Diego, California 92312-5190, telephone number
13 (619)532-2448.

14 The site is located at the following address: Fallbrook
15 Naval Weapons Station, Fallbrook, California.

16 2.2 Substances Suspected to be Found at the Site. It is
17 suspected that sites designated as sites 52A, 52B, and 52C are
18 contaminated from the degradation and leaking of canisters of
19 napalm. Napalm consists of a mixture of polystyrene (46 percent),
20 gasoline (33 percent) and benzene (21 percent), so the contaminants
21 expected include volatile organic compounds, semivolatile organic
22 compounds, benzene, toluene, ethylbenzene, and xylene.
23 Additionally, the wood storage crates in which the napalm canisters
24 have been stored have been treated with the wood preservative
25 pentachlorophenol (PCP) and 2,4-dinitrophenol, so these
26 contaminants may also be present. It is unknown at this time which
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media may be contaminated.

III. AGREEMENT

3. IT IS HEREBY AGREED THAT Parties to this Agreement shall conduct the following response activities in the manner specified herein and in accordance with a schedule specified in Exhibit E and the Scope of Work specified in Exhibit C.

3.1. Non-time Critical Removal Action

3.1.1 Site Assessment

3.1.2 California Environmental Quality Act

3.1.3 Engineering Evaluation/Cost Analysis

3.1.4 Community Involvement

3.1.5 Action Memorandum

3.1.6 Public Notice

3.1.7 EE/CA Implementation

3.1.8 Removal Action Implementation and Design Plan

3.2. Department Oversight.

3.2.1. The Department shall review and provide Project Proponent with written and/or verbal comments on the: Scoping Document, Engineering Evaluation/Cost Analysis, Community Relations Plan, Sampling and Analysis Plan, Health and Safety Plan, Removal Action Implementation and Design Plan, CEQA Initial Study Checklist, CEQA Initial Study and Action Memorandum. The comments will be issued in nine documents, one for each plan or report submitted by the Project Proponent. The comments may be of any

1 form and length determined appropriate by the Department.

2 3.2.2 Department oversight shall also include site visits to
3 ensure that workplans are implemented as approved, including
4 fieldwork, sampling events, etc.

5 3.2.3 Oversight shall include all fieldwork necessary to
6 ensure that the Community Relations Plan is implemented as
7 approved, including public meetings, public interviews, etc.

8 3.2.4. The Department's issuance of the written comments,
9 field visits, and, if appropriate, acknowledgement of immunity,
10 shall constitute the Department's complete performance under this
11 Agreement.

12 3.3. Payment. Project Proponent agrees to pay all costs of
13 response to a release or threatened release of hazardous substances
14 at the site incurred by the Department prior to the effective date
15 of this Agreement, and all costs incurred by the Department in
16 reviewing the documents described above and providing comments
17 thereon pursuant to this Agreement, and all costs incurred by the
18 Department in fieldwork and oversight. An estimate of the
19 Department's oversight costs, titled, "Scope of Work" and "Project
20 Schedule" are attached as Exhibits C and D. It is understood by
21 the parties that the estimate is precisely that and cannot be
22 relied upon as the final figure and the investigation cost may
23 exceed the estimate.

24 3.3.1. In anticipation of services to be rendered, Project
25 Proponent shall make an advance payment of \$50,000 to the
26 Department. That payment shall be made no later than fifteen (15)
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1 days after this Agreement is fully executed. If the Project
2 Proponent's advance payment does not cover all costs payable to the
3 Department under this paragraph, Project Proponent agrees to pay
4 the additional costs upon receipt of a bill from the Department.

5 3.3.2. If any subsequent bill is not paid by the Project
6 Proponent within 60 days after it is sent by the Department, the
7 Project Proponent shall be deemed to be in material default of this
8 Agreement.

9 3.3.3 All payments made by Project Proponent pursuant to this
10 Agreement shall be made payable to the "Department of Toxic
11 Substances Control" Payments shall be sent to:

12 Accounting/Cashier
13 Department of Toxic Substances Control
14 P.O. Box 806
Sacramento, California 95812-0806

15 3.3.4 If the advance payment exceeds the total actual costs,
16 the Department will refund the difference within 90 days after
17 issuance of the written comments. The Department will provide an
18 accounting for actual expenses upon 90 days written request by
19 Project Proponent.

20 3.4 Departmental Review. If the Department determines that
21 any report, plan, schedule or other document submitted for approval
22 pursuant to this Agreement fails to comply with this Agreement or
23 fails to protect public health and safety or the environment, the
24 Department may:

25 a. Modify the document as deemed necessary and approve the
26 document as modified;

27 b. Return comments to the Project Proponent with recommended
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1 changes and a date by which the Project Proponent must submit to
2 the Department a revised document incorporating the recommended
3 changes.

4 3.5 Condition Precedent. It is expressly understood and
5 agreed that the Department's receipt of the advance payment
6 described in Paragraph 3.4.1 is a condition precedent to the
7 Department's obligation to review and provide comments for the
8 documents agreed to in Paragraph 3.2.

9 3.6 Record Retention. The Department shall retain all cost
10 records associated with the work performed under this Agreement.
11 During normal business hours, the Department shall have all
12 documents which support the Department's cost determination
13 available for inspection upon request. The inspection shall be in
14 accordance with the rules of the Public Records Act.

15 3.7 Agreement Manager. John E. Scandura, the Department's
16 Chief of the Site Mitigation Branch, Region 4, is designated by the
17 Department as its Manager for this Agreement. Lieutenant Commander
18 S. G. Wright, Public Works Officer, Naval Weapons Station Seal
19 Beach, is designated by Project Proponent as Manager for this
20 Agreement. Project Proponent shall provide at least fifteen (15)
21 days advance written notice to the Department of any change in the
22 designated Agreement Manager.

23 3.7.1 The Department Agreement Manager's designee is
24 designated by the Department as its Project Manager for this
25 Agreement, Leticia Segovia. Bob Schard is designated by the
26 Project Proponent as its Project Manager for the site with which
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1 said persons' name are associated. Each party to this agreement
2 shall provide at least 15 days advance notice to the other parties
3 of any change in the designated Project Manager.

4 3.8 Notices and Submittal. All notices, documents and
5 communications required to be given under this Agreement, unless
6 otherwise specified herein, shall be sent by first-class mail,
7 postage prepaid, to the respective parties at the following
8 addresses:

9 3.8.1 To the Department:

10 John E. Scandura, Branch Chief
11 Site Mitigation Operations Branch
12 Department of Toxic Substances Control
245 West Broadway, Room 425
Long Beach, California 90802

14 3.8.2 To the Project Proponent:

15 Lieutenant Commander S. G. Wright
16 Public Works Officer
Naval Weapons Station Seal Beach
Seal Beach, California

18 3.9. Communications. Any of the Department's approvals and
19 decisions made regarding documents and communications will be
20 communicated to Project Proponent in writing by the Branch Chief,
21 Site Mitigation Branch, Department of Toxic Substances Control or
22 his/her designee. No informal advice, guidance, or suggestions or
23 comments by the Department regarding reports, plans,
24 specifications, schedules or any other writings by the Department
25 shall be construed to relieve Project Proponent of the obligation
26 to obtain such formal approvals as may be required.

27 3.9.1 The Department shall be allowed access to the Site

1 described in this Agreement whenever the Department determines that
2 access is necessary to protect the public health and safety or the
3 environment.

4 3.9.2 When requested by the Department, Project Proponent
5 shall make available to the Department, and shall provide copies
6 of, all data and information concerning contamination at the site,
7 including technical records and contractual documents, sampling and
8 monitoring information and photographs and maps, whether or not
9 such data and information was developed pursuant to this Agreement.

10 3.10 Sampling, Data and Document Availability. Project
11 Proponent shall make all sampling data and related documents
12 available to the Department.

13 3.10.1 Project Proponent shall permit the Department and its
14 authorized representatives to inspect and copy all sampling,
15 testing, monitoring or other data that is generated by Project
16 Proponent or on the Project Proponent's behalf and that pertains to
17 work undertaken pursuant to this Agreement.

18 3.10.2 Project Proponent shall submit all such data upon the
19 request of the Department. Copies shall be provided within seven
20 days of receipt of the Department's written request. Project
21 Proponent shall inform the Department at least fourteen days in
22 advance of all field sampling and shall allow the Department and
23 its authorized representatives to take duplicates of any samples
24 collected by the Project Proponent pursuant to this Agreement.

25 3.10.3 Project Proponent shall maintain a central repository
26 of the data, reports, and other documents prepared pursuant to this
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1 Agreement. All such data, reports and other documents shall be
2 preserved by Project Proponent for a minimum of six years after the
3 conclusion of all activities under this Agreement. If the
4 Department requests that some or all of these documents be
5 preserved for a longer period of time, Project Proponent shall
6 either comply with that request or deliver the documents to the
7 Department, or permit the Department to copy the documents prior to
8 destruction. Project Proponent shall notify the Department in
9 writing at least six months prior to the expiration of the six-year
10 period before destroying any documents prepared pursuant to this
11 Agreement.

12 3.11. Preservation of Evidence. Project Proponent shall
13 preserve all potential evidentiary documentation found at the site,
14 including without limitation, documents, labels, drums, bottles,
15 boxes or other containers, and/or other physical materials that
16 could lead to the establishment of the identity of any potentially
17 responsible party that generated, treated, transported, stored or
18 disposed of contaminants at the site, until written approval is
19 received from the Department to do otherwise.

20 3.12. Liability. Except as provided in Paragraph 3.2.2,
21 nothing in this Agreement shall constitute or be considered a
22 satisfaction or release from liability for any condition or
23 claim(s) arising as a result of Project Proponent's past, current,
24 or future operations. Nothing in this Agreement is intended or
25 shall be construed to limit the rights of any of the parties with
26 respect to claims arising out of or relating to the deposit or
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1 disposal at any other location of substances removed from the site.
2 Notwithstanding compliance with the terms of this Agreement, and
3 except as provided in Paragraph 3.2.2. Project Proponent may be
4 required to take further actions as are necessary to protect public
5 health or safety or the environment.

6 3.13. Priority of Claims. In any contribution action, the
7 rights of Project Proponent shall be subordinate to the rights of
8 the Department pursuant to CERCLA Section 113(f)(3)(c) (42 U.S.C.
9 Section 9613(f)(3)(c)).

10 3.14. Government Liabilities. The State of California shall
11 not be liable for any injuries or damages to persons or property
12 resulting from acts or omissions by Project Proponent or by related
13 parties in carrying out activities pursuant to this Agreement, nor
14 shall the State of California be held as a party to any contract
15 entered into by Project Proponent or its agents in carrying out the
16 activities pursuant to this Agreement.

17 3.15. Cost Recovery. In addition to liability for oversight
18 costs, Project Proponent's failure or refusal to comply with this
19 Agreement may make Project Proponent liable for any governmental
20 costs incurred, including those payable from the Hazardous
21 Substance Account or the Hazardous Substance Cleanup Fund for any
22 response action at the site, as provided in Health and Safety Code
23 Section 25360 and other applicable provisions of law. The
24 Department may also pursue cost recovery under CERCLA.

25 3.16. Amendments. This Agreement may be amended or modified
26 solely upon written consent of all parties. Such amendments or
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1 modifications may be proposed by any party and shall be effective
2 the third business day following the day the last party signing the
3 amendment or modification sends its notification of signing to the
4 other party. The parties may agree to a different effective date.

5 3.17. Resolution of Disputes. If either party believes there
6 is a dispute between the Project Proponent and the State, the
7 following two-step procedure shall be followed by both parties:

- 8 a. The Project Proponent shall first discuss the
9 problem informally with the Project Manager within
10 the Department. If the problem cannot be resolved
11 at this stage, the Project Proponent shall file, in
12 writing, a description of the dispute, together with
13 any supporting evidence, for the Project Proponent's
14 position, with the Department's Agreement Manager.
15 The filing must state the issues in the dispute, the
16 legal authority or other basis for the Project
17 Proponent's position and the remedy sought. The
18 Department Agreement Manager or designee must make a
19 determination on the filing within ten (10) working
20 days after receipt of the written communication from
21 the Project Proponent. The Department Agreement
22 Manager shall respond in writing to the Project
23 Proponent, providing the Department's decision and
24 reasons therefor. If the Department Agreement
25 Manager or designee fails to respond to the Project
26 Proponent within ten working days, then the Project

1 Proponent may appeal to the Deputy Director as
2 provided in paragraph 3.17(b). Should the Project
3 Proponent disagree with the Department Agreement
4 Manager's decision, they may appeal to the next
5 level.

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7 b. To trigger the next level of appeal the Project
8 Proponent shall prepare a written statement,
9 indicating why the Department Agreement Manager's
10 decision is unacceptable, and attach the Project
11 Proponent's written filing prepared pursuant to the
12 preceding paragraph together with supporting
13 documents and with a copy of the Department
14 Agreement Manager's response. The Project
15 Proponent's written statement shall be sent to the
16 Deputy Director, Site Mitigation, of the Department
17 of Toxic Substances Control within fifteen (15)
18 working days after receipt of the Department's
19 written decision under the preceding paragraph. The
20 Deputy Director or designee shall meet the Project
21 Proponent to review the issues raised and render a
22 written decision to the Project Proponent within
23 twenty (20) working days of receipt of the Project
24 Proponent's letter. The decision of the Deputy
25 Director or designee shall be the final decision of
26 the Department.

1 3.18 Representative Authority. The undersigned
2 representative of each party to this Agreement certifies that he or
3 she is fully authorized to enter into the terms and conditions of
4 this Agreement and to execute and legally bind that party to this
5 Agreement.

6 3.19 Reservation of Rights. The Department and the Project
7 Proponent reserve the following rights.

8 3.19.1. The Department reserves the right unilaterally to
9 terminate this Agreement in the event that Project Proponent
10 violates any terms or fails to meet the obligations of this
11 Agreement.

12 3.19.2. The Department reserves the right to take any
13 enforcement action that it determines to be necessary pursuant to
14 CERCLA and/or any other authority, including the right to seek
15 response costs, injunctive relief, monetary penalties, and punitive
16 damages. Nothing in this Agreement is intended or shall be
17 construed to limit or preclude the Department from taking any other
18 action authorized by law or equity to protect public health or
19 safety or the environment and recovering the cost thereof.

20 3.19.3. By entering into this Agreement, Project Proponent
21 does not admit to any fact, fault or liability under any statute or
22 regulation for conditions which existed before, during, or after
23 the execution of this Agreement.

24 3.19.4. Nothing in this Agreement shall constitute or be
25 construed as a waiver of Project Proponent's rights, (including any
26 covenant not to sue or release) with respect to any claim, cause of
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1 action, or demand in law or equity that Project Proponent may have
2 against any "person", as defined in Section 101(21) of CERCLA or
3 Health and Safety Code Section 525319, that is not a signatory to
4 this Agreement.

5 3.19.5. Nothing in this Agreement shall be deemed to limit
6 the Department's response authority under either Health and Safety
7 Code Section 25358.3 or under any other response authority.

8 3.19.6. In no case shall Project Proponent be entitled to a
9 refund from the Department or to assert a claim against the
10 Department for any amount paid or expended under this Agreement,
11 except as provided in paragraph 3.3.4. or 3.20.

12 3.20. Termination for Convenience. Each party to this
13 Agreement reserves the right unilaterally to terminate this
14 Agreement for any reason. Termination may be accomplished by
15 giving written notice of the election to terminate the Agreement to
16 the other party hereto. Termination shall be effective five (5)
17 business days after notice is given to the affected party. In the
18 event that this Agreement is terminated under this Paragraph, the
19 Project Proponent shall be entitled to a refund to the extent that
20 the payment(s) made exceed all costs incurred by the Department
21 through the effective date of termination, which are payable by
22 Project Proponent under Paragraph 3.3.

23 3.21. Notification of Environmental Conditions. Project
24 Proponent shall, in addition to any other obligation required by
25 law, notify the Department's Project Manager immediately upon
26 knowledge of any condition posing an immediate threat to human
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1 health and/or the environment.

2 3.22. Compliance with Applicable Laws. Nothing in this
3 Agreement shall relieve Project Proponent from complying with all
4 other applicable laws and regulations, and Project Proponent shall
5 conform all actions required by this Agreement with all applicable
6 federal, state and local laws and regulations.

7 3.23. Section Headings. The section headings set forth in
8 this Agreement are included for convenience of reference only and
9 shall be disregarded in the construction and interpretation of any
10 of the provisions of this Agreement.

11 3.24. Exhibits. All exhibits attached to this Agreement are
12 incorporated herein by reference.

13 3.25. Time Periods. Unless otherwise specified, time periods
14 begin from the date this Agreement is fully executed, and "days"
15 means calendar days. "Business days" means all calendar days that
16 are not weekends or official State holidays.

17 3.26. Parties Bound. This Agreement applies to and is
18 binding, jointly and severally, upon each signatory and its
19 officers, directors, agents, employees, contractors, consultants,
20 receiver, trustees, successors and assignees, including but not
21 limited to, individuals, partners, subsidiary and parent
22 corporations, and upon any successor agency of the State of
23 California that may have responsibility for and jurisdiction over
24 the subject matter of this Agreement. No change in the ownership
25 or corporate or business status of any signatory, or of the
26 facility or site shall alter any signatory's responsibilities under

1 this Agreement.

2 3.27. Drafting. This Agreement is deemed drafted equally by
3 the parties hereto.

4 3.28. Integration. This Agreement represents the full and
5 complete understanding of the parties hereto.

6 3.29. California Law. This Agreement shall be governed,
7 performed and interpreted under the laws of the State of
8 California.

9 3.30. Enforceability. If any portion of this Agreement is
10 ultimately determined not to be enforceable, that portion will be
11 severed from the Agreement and does not defeat the enforceability
12 of the remaining terms of the Agreement.

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15 _____
16 Date

17 _____
18 John E. Scandura, Branch Chief
19 Site Mitigation Operations
20 Department of Toxic Substances
21 Control
22 245 W. Broadway, Room 425
23 Long Beach, California 90802

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26 _____
27 Date

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Lieutenant Commander S.G. Wright
Public Works Officer
Naval Weapons Station Seal Beach
Seal Beach, California 90740

IV. EXHIBITS

- A. Site Diagrams
- B. Site Location Map
- C. Scope of Work
- D. Cost Estimate
- E. Project Schedule

EXHIBIT A
SITE DIAGRAM - SITE 52A

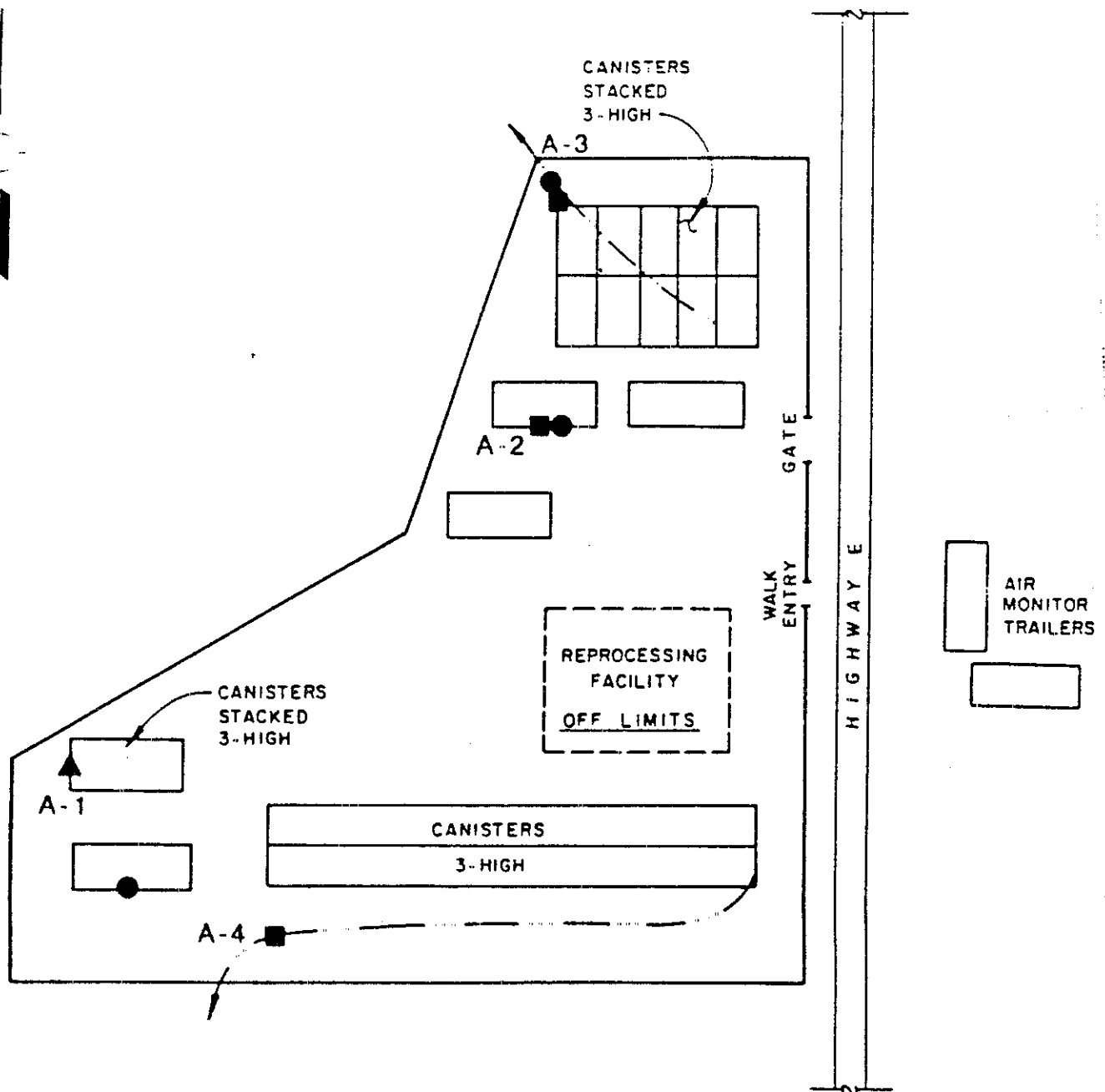


EXHIBIT A
SITE DIAGRAM - SITE 52B

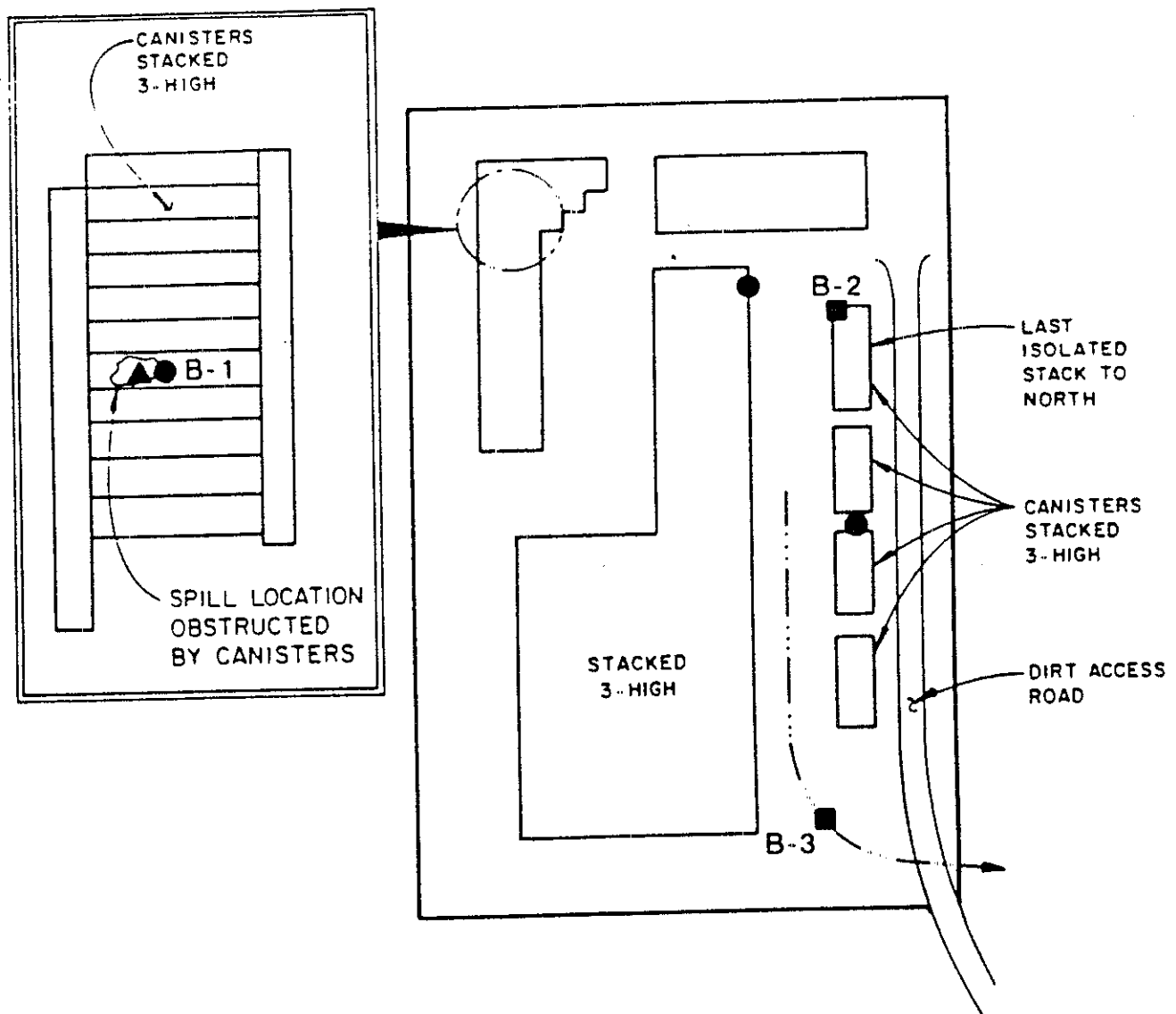


EXHIBIT A
SITE DIAGRAM - SITE 52C

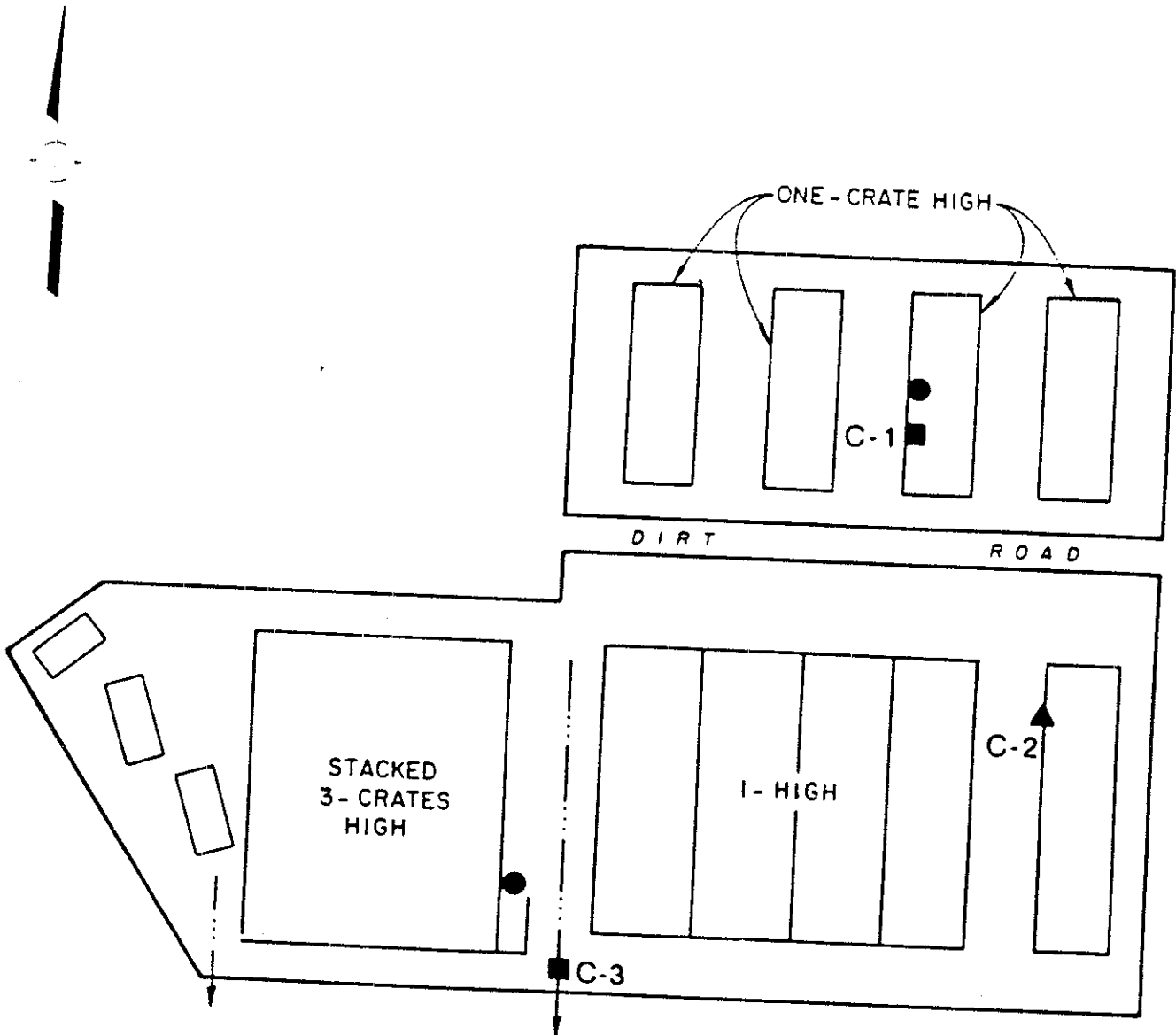
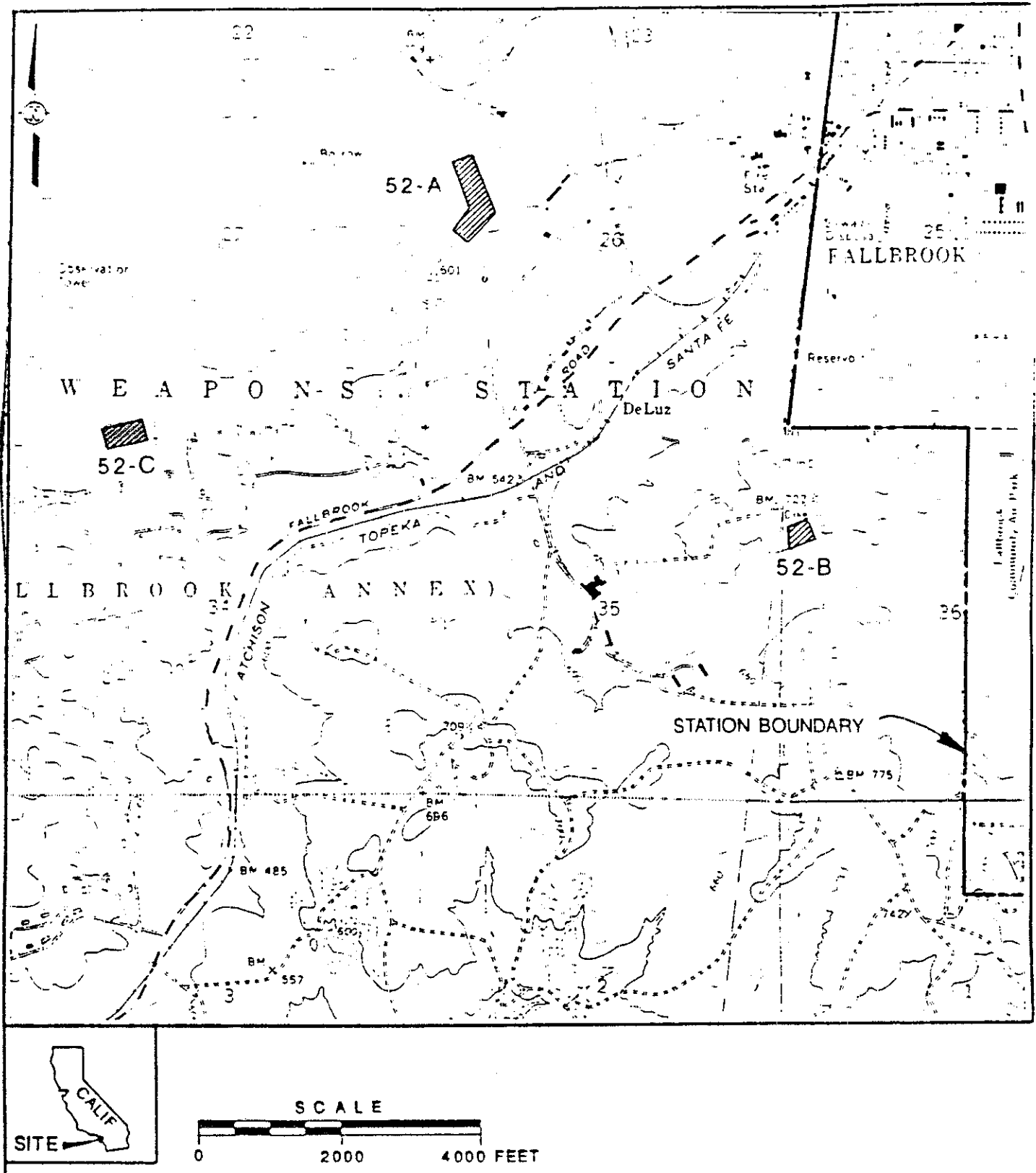


EXHIBIT B

Site Location Map



1 EXHIBIT C

2 SCOPE OF WORK

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4 Removal Action Objectives. The objectives of the removal action
5 are to:

6 (a) Remove, to the extent acceptable to protect human health,
7 safety and the environment, hazardous substance contamination at
8 the site, including the napalm, the treated wood crates containing
9 the napalm, and any residual contamination which may be present in
10 the soil or groundwater beneath the site.

11 (b) Protect the community from exposure to airborne dust,
12 vapors, and unnecessary exposure by securing the site during the
13 removal action and employing appropriate control and containment
14 measures.

15 (c) Collect and evaluate appropriate soil samples to verify
16 that removal action objectives have been met.

17 The following are documents to be submitted to the Department for
18 review and approval, to ensure that removal action objectives are
19 met.

20 1. Engineering Evaluation/Cost Analysis

21 2. Community Relations Plan

22 3. Removal Action Implementation and Design Plan(RAID Plan). The
23 RAID plan shall be designed to meet the objectives stated in the
24 preceding paragraph and shall cover at a minimum, each of the
25 following elements:

26 (a) Project Management Plan which will describe how the
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1 project will be managed by the Navy and its contractors,
2 subcontractors, and consultants including an organization chart
3 with the names and titles of key personnel and a description of
4 their individual responsibilities.

5 (b) Scoping Document which consists of an evaluation of
6 existing hazards, nature of work to be performed, contingency plans
7 necessary, and identification of the relevant public and worker
8 health and safety regulations applicable to the removal action.

9 (c) Verification Sampling Plan which describes the activities
10 necessary to collect an adequate number of samples to verify that
11 removal action objectives have been met

12 4. Site Assessment

13 5. California Environmental Quality Act

14 6. Action Memorandum

15 7. Health and Safety Plan

EXHIBIT D

**FALLBROOK NAVAL WEAPONS STATION
PROJECTED OVERSIGHT REMOVAL ACTION COSTS**

CLASSIFICATION	HOURLY RATE	PERSONNEL HOURS	TOTAL COSTS*
Project Manager	\$22.63	2,058	\$46,572.54
Senior WME	28.67	147	4,214.49
Technical Support	24.88	735	18,286.80
Legal Counsel	32.24	10	322.40
Public Participation	22.08	412	9,096.96
SUBTOTAL		3,362	\$78,493.19
FRUBGE 22%			\$17,268.50
TOTAL PERSONNEL SERVICES			\$95,761.69
TRAVEL			\$4,060.00
TOTAL DIRECT			\$99,821.69
CAP PERSONNEL SERVICES 79%**			\$75,651.74
CAP OE&E 9%***			\$8,618.55
TOTAL CAP			\$84,270.29
ICRP 73%			\$69,906.04
TOTAL			\$253,998.01

*Balance rounded in Lotus

**(79% x Personnel Services) = Cap Personnel Services.

*** (9% x Personnel Services) = Cap OE&E.

**** (73% x Total Personnel Services) = ICRP.

1 EXHIBIT E

2 PROJECT SCHEDULE

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4 Removal actions and remediation activities shall be commenced by
5 the project proponent within a time period selected by the
6 Department.

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8 Following is a preliminary schedule for implementation of the
9 removal action at Naval Weapons Station Fallbrook Annex.

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11 PROPOSED SCHEDULE

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Final Community Relations Plan	March 1, 1994
Final Engineering Evaluation/ Cost Analysis	March 1, 1994
Final Removal Action Implementation and Design Plan	October 1, 1994

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